

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
May 14, 2004 Session

IN RE: D.C.L. and T.H.L., CHILDREN UNDER EIGHTEEN (18) YEARS OF AGE

**Appeal from the Juvenile Court for Knox County
Nos. J-20,616 and J-20,617 Kay Harrison Kaserman, Special Judge**

FILED JUNE 11, 2004

No. E2003-00937-COA-R3-JV

The trial court terminated the parental rights of G.L. and his wife, S.L., to their children, D.C.L. and T.H.L. The court awarded guardianship of the children to their maternal grandmother, S.P. The children's father¹ appeals. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court
Affirmed; Case Remanded**

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which D. MICHAEL SWINEY, J., and WILLIAM H. INMAN, SR.J., joined.

Charles T. Webber, Jr., Knoxville, Tennessee, for the appellant, G.L.

Judith R. Whitfield, Oak Ridge, Tennessee, for the appellee, S.P.

Wanda G. Sobieski, Knoxville, Tennessee, Guardian Ad Litem for D.C.L. and T.H.L.

MEMORANDUM OPINION

Following two days of testimony and a subsequent hearing at which the parties presented argument, the trial court, on January 7, 2003,² filed an exhaustive and comprehensive 21-page order terminating parental rights and designating S.P. as the children's guardian. The trial court found clear and convincing evidence of grounds for termination of parental rights under T.C.A. §§ 36-1-

¹The children's mother did not appeal the termination of her parental rights.

²The appellee argues that the notice of appeal filed on February 6, 2003, was not timely filed. She points to the fact that the signature of the trial judge reflects that it was placed on the order on January 6, 2003. The appellee is correct as to the date when the trial court signed its order; however, this is not the critical date. The operative date is the date on which the order was filed with the clerk of the trial court. That date is January 7, 2003. Hence, the notice of appeal was timely filed.

113(g)(3)(A) (Supp. 2003) and 36-1-113(g)(1) (Supp. 2003). The court also found clear and convincing evidence that termination was in the best interest of D.C.L. and T.H.L.

In his appeal, G.L. argues, in effect, that there is insufficient evidence to support the trial court's factual findings underpinning its decision to terminate his parental rights. He also argues for reversal based upon "errors and omissions committed by the attorneys for the father, the Clerk of the Juvenile Court and representatives of CASA." The arguments of G.L. pertaining to the alleged errors raised by him all focus on factual matters. This being the case, they require an examination of the trial testimony heard on October 30 and 31, 2002. We are precluded from examining and evaluating this testimony because the appellant failed to file a transcript of evidence, *see* Tenn. R. App. P. 24(b); or a statement of the evidence. *See* Tenn. R. App. P. 24(c).³ As we said in *Sherrod v. Wix*, 849 S.W.2d 780 (Tenn. Ct. App. 1992),

[w]hen a trial court decides a case without a jury, it's [sic] findings of fact are presumed to be correct unless the evidence in the record preponderates against them. Tenn. R. App. P. 13(d). This court cannot review the facts de novo without an appellate record containing the facts, and therefore, we must assume that the record, had it been preserved, would have contained sufficient evidence to support the trial court's factual findings.

Id. at 783.

Pursuant to the provisions of Rule 10 of the Rules of the Court of Appeals,⁴ we affirm the judgment of the trial court. Costs on appeal are taxed to G.L. This case is remanded to the trial court for enforcement of that court's judgment and for collection of costs assessed below, all pursuant to applicable law.

CHARLES D. SUSANO, JR., JUDGE

³The appellant did file a "Statement of Evidence" in the trial court on August 1, 2003. It consists of one letter-size page and purports to relate to a hearing on April 24, 2000. The filed Statement of Evidence does not pertain to the evidentiary hearing in October, 2002, the hearing that prompted the trial court to terminate the parental rights of the parents.

⁴Rule 10 of the Rules of the Court of Appeals provides as follows:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION", shall not be published, and shall not be cited or relied on for any reason in any unrelated case.